

REMARKS

Applicants wish to thank the Examiner for reviewing the present patent application.

I. Election/Restriction

Applicants, again, confirm the election of claims 1-8. Applicants will consider cancelling claims 9-19 upon confirmation that claims 1-8 are allowable.

II. Rejection Under 35 USC §112, Second Paragraph

Applicants appreciate and acknowledge that the 35 USC §112 paragraph 2 rejection is withdrawn and moot.

III. Rejection Under 35 USC §102(b)

Applicants appreciate and acknowledge that the rejection to claims 1-8 under 35 USC §102(b) in view of U.S. Patent Application No. 2002/0028223 is withdrawn and moot.

IV. Rejection Under 35 USC §102(b)

Applicants acknowledge that the rejection of claims 1-6 and 8 under 35 USC §102(b) in view of U.S. Patent No. 6,747,115 is withdrawn and moot.

V. Rejection Under 35 USC §103

The Examiner has rejected claims 1-8 under 35 USC §103 as being unpatentable over Sakuta et al., U.S. Patent No. 6,747,115 in view of Vatter et al., U.S. Patent Application No. 2002/0028223 (hereinafter, '115 and '223, respectively). In the rejection, the Examiner mentions, in summary, that the '115 reference describes silicone polymer that is insoluble in organic solvents due to its three dimensional cross-linked structure which swells up relative to fluorosilicate oils. The Examiner further mentions that the silicone polymer is a cross-linked product of SiH containing fluorosilicone and an unsaturated polyoxyalkylene. Even further, the Examiner mentions that the '115 reference relates to a paste-like composition formed by making the silicone compound swell up in silicone oil. The Examiner believes that the '115 reference describes all other claimed limitations including those associated with the amount of titanium oxide coated mica that be used and the use of pigments that include talc, mica, and titanium oxide coated mica. The Examiner admits that the '115 reference does not, even remotely, describe the particle size of the light scattering particles. Nevertheless, in an attempt to cure the vast deficiencies of the '115 reference, the Examiner relies on the '223 reference and suggests that the same mentions compositions that comprise a solid that reflects light of certain wave lengths while absorbing light of other wave lengths. The Examiner notes that the '223 reference mentions primary average particle sizes and concludes that the claimed viscosity, opacity, gloss and normal force are inherent properties since the Examiner believes that the combination of the references relied on teach the claimed composition. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

Independent claim 1 is directed to a water based cosmetic composition comprising:

- (a) about 0.01 to about 30% by weight of the composition of a cross linked polysiloxane elastomer;
- (b) about 0.1% to about 25% of light scattering particles having a particle size of less than about 30 micrometers; and
- (c) a cosmetically acceptable vehicle;

wherein said composition has:

a viscosity of at room temperature of about 10 Pa.s to about 100 Pa.s at a shear rate of 1 1/s; and about 0.01 Pa.s to about 0.3 Pa.s at 10,000 1/s ;

an Opacity of about 3 % to about 6 %;

a 60 degrees Gloss of up to about 10 g.u.;

a normal force of up to about 0.1 N at a shear rate of 10,000 1/s; and

said composition resulting in an improvement of appearance of facial pores of at least about 2 as measured by the Pore Ruler.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, that the composition can further comprise silicone oil, that the composition can comprise specific light scattering particles, that the elastomer present can make up from about 1% to about 10% by weight of the composition, that the light scattering particles can make up from about 1% to about 10% by weight of the composition, that

the light scattering particles can have a particle size from about 200nm to about 20 micrometers and that the composition can further comprise up to 2% by weight of a thickener.

In contrast, the '115 reference is merely directed to a silicone polymer and a cosmetic composition containing the silicone polymer. Particularly, the '115 reference is directed to a silicone polymer having a fluorine-modified oil with excellent water repellents and oil repellents as base oil, and which swells up relative to these oils, to a homogeneous paste-like composition using the silicone polymer, and to a cosmetic material comprising this composition. The '115 reference does not, even remotely, teach, suggest or describe the particular viscosity, opacity, gloss, normal force or appearance improvement based on pores as set forth in the claimed invention as now presented.

The '223 reference, on the other hand, does not cure the vast deficiencies of the primary reference since the same is only directed to anhydrous skin treatment compositions and not water-based compositions as now claimed. The combination of references relied on by the Examiner does not, teach, suggest or disclose a water-based cosmetic composition that results in a product suitable to improve the of appearance of facial pores as set forth in the presently claimed invention.

In view of the above, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner. Therefore, Applicants respectfully request that the obviousness rejection be withdrawn and rendered moot.

Applicants submit that all claims of record are in condition for allowance. Reconsideration and favorable action are earnestly solicited.

Applicants further submit this application is ready for appeal.

In the event the Examiner has any questions concerning the present patent application, the Examiner is kindly invited to contact the undersigned at her earliest convenience.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. A. Squillante, Jr.', written over a horizontal line.

Edward A. Squillante, Jr.
Registration No. 38,319
Attorney for Applicant(s)

EAS/pod
(201) 894-2925